

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

8

DECISION

TOPIC

**RULING ON DNR'S MOTION FOR SUMMARY JUDGMENT –
CDI, LLC and WINNEBAGO INDUSTRIES, INC.**

In the Matter of: CDI, LLC, and Winnebago Industries, Inc.

CDI, LLC, (CDI) and Winnebago Industries, Inc., (Winnebago) each have filed several appeals concerning determinations made by the department that the two companies operate facilities in Charles City and Forest City, Iowa, considered to be major source stationary sources under Iowa's air quality laws. A total of twelve appeals were consolidated into one contested case proceeding.

On October 25, 2006, the department filed a Motion for Summary Judgment. On November 15, 2006, CDI and Winnebago filed a joint resistance to the Motion for Summary Judgment. On November 30, 2006, the department filed a reply to the joint resistance.

A Motion for Summary Judgment is properly granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to an material fact and that the moving party is entitled to judgment as a matter of law." Iowa Rule of Civil Procedure 1.981(3).

On December 29, 2006, Administrative Law Judge Margaret LaMarche granted the department's Motion for Summary Judgment. The administrative law judge ruled that (1) the department carried its burden to establish that there is no genuine issue of material fact with respect to the single major stationary source determination and that (2) based on the facts, the department is entitled to judgment as a matter of law.

The department asked for summary judgment of its determination that the CDI and Winnebago sites in Charles City should be considered one single major stationary source and, likewise, that the CDI and Winnebago sites in Forest City should be considered one single major stationary source. Pursuant to 40 CFR 52.21(b)(6), in order to be one major stationary source, two sites must:

- a) belong to the same industrial grouping;
- b) be located on one or more contiguous or adjacent properties; and
- c) be under common control of the same person (or persons under common control).

In their joint Resistance to the Motion for Summary Judgment, CDI and Winnebago admitted that they (a) belong to the same industrial grouping, and (b) are located on contiguous or

adjacent properties in both Forest City and Charles City. With respect to the third requirement, common control, the administrative law judge ruled that common control exists for both the Charles City and Forest City facilities, and that the department is entitled to judgment as a matter of law.

On January 9, 2007, CDI and Winnebago filed with the administrative law judge a joint Motion to Enlarge or Amend or Alternative Petition for Rehearing. On January 22, 2007, the department filed a Resistance to both motions. On January 24, 2007, the administrative law judge issued a ruling stating the administrative law judge lacks the authority to rule on the motions and that CDI and Winnebago must file any appeal or motions pertaining to the department's Motion for Summary Judgment with the Environmental Protection Commission within 30 days of their receipt of the "Ruling on DNR's Motion for Summary Judgment."

On January 30, 2007, CDI and Winnebago jointly appealed the Proposed Decision containing the "Ruling on DNR's Motion for Summary Judgment." Pursuant to a briefing schedule set by the Commission at its February 2007 meeting, Briefs were due on February 21, 2007, and Reply Briefs were due on March 12, 2007. The appeal of the Proposed Decision is on the agenda for the April 2007 meeting.

Edmund J. Tormey, Chief
Legal Services Bureau
March 12, 2007